

APR 06 2007

PTO/SB/21 (09-06)

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/920,961	
	Filing Date	08/03/2001	
	First Named Inventor	Edwin Lyda	
	Art Unit	2623	
	Examiner Name	Tran, Hai V.	
Total Number of Pages in This Submission	5	Attorney Docket Number	LYDA-01

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request For Replacing Examiner; Expediting Appeal
Remarks ATTN: To Andrew Faile, Director, Art Unit 2623		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Annelin and Gaskin		
Signature	<i>Mary J. Gaskin</i>		
Printed name	Mary J. Gaskin		
Date	April 6, 2007	Reg. No.	30,381

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature	<i>Mary J. Gaskin</i>		
Typed or printed name	Mary J. Gaskin	Date	4/6/07

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In re Application of: Edwin Lyda	}	Date: April <u>6</u> , 2007
	}	
Application No.: 09/920,961	}	Group Art Unit: 2623
	}	
Filed: 08/03/2001	}	Examiner: Tran, Hai V.
	}	
For: Distance Learning System	}	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Andrew Faile, Director**

**REQUEST FOR REPLACING EXAMINER: EXPEDITING APPEAL**

I am the attorney prosecuting the above-referenced application. As a member of the U.S. Patent Bar for over 25 years, I have always been able to work with Examiners in achieving fair results for my clients and the patent office. However, in view of the actions (or inactions) taken by the present Examiner, Hai V. Tran, I must request that this application be assigned to a different Examiner.

If you review the file history, you will understand my frustration. The most basic request, entry of a Power of Attorney, which was filed on March 24, 2005, along with an affidavit by Edwin Lyda, the inventor, was ignored for almost a year! After it was filed, Hai Tran sent at least three office actions to Mr. Lyda's previous attorneys. Each time I reminded him of the change, he failed to ensure that the Power of Attorney was entered. Finally, on March 3 and March 8, 2006, I called a supervisor, who personally made sure the document, which had been filed a year before, was entered. "Acceptance" of the power of attorney was mailed on March 9, 2006. Apparently, Hai Tran failed to understand

the importance of ensuring that USPTO correspondence was sent to the authorized representative, not to a firm that had no further business with the applicant.

Subsequent thereto, applicant filed a Notice of Appeal (3/22/06) and an Appeal Brief (4/27/06). The USPTO received the Appeal Brief on May 1, 2006, and on May 4, 2006 forwarded it to Hai Tran. More than two months later, on July 14, 2006, Hai Tran reopened prosecution, sending an office action which regurgitated his previous rejection (which had precipitated the appeal). I was unable to discern a basis for reopening prosecution since no new references were directed at the independent claims. I called Christopher Kelley, Hai Tran's supervisor, who indicated prosecution was reopened based on the need for a shored-up rejection to Claim 3, a dependent claim. In our conversation, I discussed the differences between the present claims and the Ferris reference. He suggested I fax him proposed claims which would further distinguish over Ferris, and I did so. He left a telephone message indicating it appeared we had claimed over Ferris, and he suggested I reply to the rejection with the amended claims. Over two months later, I received Hai Tran's rejection, once again citing Ferris.

I immediately reopened the appeal by filing a Notice of Appeal, followed by an Appeal Brief, which was received by the USPTO on December 4, 2006. For some reason, it was not forwarded to the Examiner until January 9, 2007. Thereafter, another two months passed without a reply. I finally telephoned Christopher Kelley to find out why Hai Tran had not filed a timely response. He directed me to Scott Beliveau, Hai Tran's acting supervisor. Mr. Beliveau had been present at an appeal conference held the week before, and he indicated that the Appeal Brief I had filed almost 3½ months earlier had been found

to be defective for two reasons:

- (1) I had sometimes used the term "applicant" instead of "appellant"; and
- (2) I had corrected a typographical error in one of the claims.

Needless to say, I was quite chagrined that I would need to file an amended brief and would have to wait several more months for the Examiner's reply (or for some other delay tactic to occur). I was also at a loss to understand why I had not been so informed much sooner; the "defects" should have been readily ascertained when Hai Tran received the brief at the beginning of January, and I could have filed a corrected brief then.

The last straw came when I received the actual Notification of Non-Compliant Appeal Brief, signed by Hai Tran. He referred to the two items mentioned by Mr. Beliveau, but he had also checked Box 4 and stated under Box 10:

"Limitation in independent claims 1, 13, 20, i.e., the mechanism operating without receiving signals eliciting a response by the user, does not correctly refers to Appellant's specification pages and line number because the referred pages and lines do not support that limitation."

Since my brief already contained the information required by Box 4, I called Mr. Beliveau, who, after reviewing the Notice, indicated that I should ignore the checkmark by Box 4 and the language under 10 about the limitations. Apparently, Hai Tran had added that requirement without discussing it with his supervisors, thinking I would not be able to file an amended brief that would comply (since I had already provided material which I viewed as satisfying the requirement).

I have no doubt that Hai Tran is doing everything he can to delay the prosecution and appeal of the present application. His office actions always contain language that is difficult to comprehend; he displays less than adequate skill in communicating in English.

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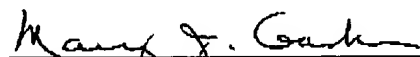
His arguments are convoluted and indicate that he does not understand the claims. Both the inventor and I feel that, if someone other than Hai Tran were to read the specification, the Ferris reference, and our Appeal Brief, the claims would be found to be allowable over Ferris. The inventor is becoming increasingly disheartened because no one in the patent office (other than Hai Tran) has read the documents and, consequently, no one understands the need for and usefulness of the technology involved. Under 35 U.S.C. §§101-103, he has a right to have a patent granted (the Ferris reference has no application whatsoever to his claims). I have never before requested that an Examiner be removed from an application I've been handling. However, the events that have transpired require me to do so.

Further, in view of the lengthy delays associated with this case, I request that the appeal be expedited, to the greatest extent feasible.

Please contact me if you have any questions or comments.

Date: April 6, 2007

Respectfully submitted,



Mary J. Gaskin

Attorney for Applicant

Registration No. 30,381

2170 Buckthorne Pl., Suite 220

The Woodlands, TX 77380

Phone: (281) 363-9121

Fax: (281) 363-4066

cc: Mr. Scott Beliveau  
Mr. Edwin Lyda

C:\A&G\Patents\lyda\rqexaminer